

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 30

Introduced by Senator Figueroa
(Coauthor: Assembly Member Correa)

December 2, 2002

An act to amend ~~Section 7159 of the Business and Professions Code Sections 7030 and 7151.2 of, to add Sections 7159.4, 7159.5, 7159.6, 7159.7, and 7159.9 to, to repeal Section 7018.5 of, and to repeal and add Sections 7159 and 7159.3 of, the Business and Professions Code, and to amend Sections 1689.5, 1689.6, and 1689.7 of, and to add Section 1689.13 to, the Civil Code~~, relating to home improvement contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 30, as amended, Figueroa. Home improvement contracts.

Existing law *defines a "home improvement contract" and* requires home improvement contracts between contractors and homeowners or tenants to comply with specified requirements, and makes a violation of these provisions *regarding home improvement contracts* a crime.

~~This bill would, in addition, require that these contracts be written in plain language and to be written, organized, and designed so that they are easy to read and understand. Because the bill creates new crimes, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason. Existing law authorizes an individual to rescind a home improvement contract if certain conditions are met.~~

This bill would repeal these provisions and instead require that a home improvement contract and any changes made to that contract be in writing, be legible, be easy to understand, and inform a consumer of his or her 3-day right to cancel or rescind the contract. This bill would require that a home improvement contract contain various information, notices, and disclosures for the protection of the consumer. The bill would provide that a violation of these provisions subjects the home improvement contractor to discipline. The bill would define a “service and repair contract” and would include this type of contract within the definition of a home improvement repair contract. The bill would make conforming changes and revise and recast certain existing provisions regarding home improvement contracts.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 7159 of the Business and Professions~~
- 2 ~~SECTION 1. Section 7018.5 of the Business and Professions~~
- 3 ~~Code is repealed.~~
- 4 ~~7018.5. (a) The board shall prescribe a form entitled “Notice~~
- 5 ~~to Owner” which shall state:~~
- 6 ~~“Under the California Mechanics’ Lien Law, any contractor,~~
- 7 ~~subcontractor, laborer, supplier, or other person or entity who~~
- 8 ~~helps to improve your property, but is not paid for his or her work~~
- 9 ~~or supplies, has a right to place a lien on your home, land, or~~
- 10 ~~property where the work was performed and to sue you in court to~~
- 11 ~~obtain payment.~~
- 12 ~~This means that after a court hearing, your home, land, and~~
- 13 ~~property could be sold by a court officer and the proceeds of the~~
- 14 ~~sale used to satisfy what you owe. This can happen even if you~~
- 15 ~~have paid your contractor in full if the contractor’s subcontractors,~~
- 16 ~~laborers, or suppliers remain unpaid.~~
- 17 ~~To preserve their rights to file a claim or lien against your~~
- 18 ~~property, certain claimants such as subcontractors or material~~
- 19 ~~suppliers are each required to provide you with a document called~~
- 20 ~~a “Preliminary Notice.” Contractors and laborers who contract~~

1 ~~with owners directly do not have to provide such notice since you~~
2 ~~are aware of their existence as an owner. A preliminary notice is~~
3 ~~not a lien against your property. Its purpose is to notify you of~~
4 ~~persons or entities that may have a right to file a lien against your~~
5 ~~property if they are not paid. In order to perfect their lien rights,~~
6 ~~a contractor, subcontractor, supplier, or laborer must file a~~
7 ~~mechanics' lien with the county recorder which then becomes a~~
8 ~~recorded lien against your property. Generally, the maximum time~~
9 ~~allowed for filing a mechanics' lien against your property is 90~~
10 ~~days after substantial completion of your project.~~

11 ~~TO INSURE EXTRA PROTECTION FOR YOURSELF AND~~
12 ~~YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR~~
13 ~~MORE OF THE FOLLOWING STEPS:~~

14 ~~(1) Require that your contractor supply you with a payment and~~
15 ~~performance bond (not a license bond), which provides that the~~
16 ~~bonding company will either complete the project or pay damages~~
17 ~~up to the amount of the bond. This payment and performance bond~~
18 ~~as well as a copy of the construction contract should be filed with~~
19 ~~the county recorder for your further protection. The payment and~~
20 ~~performance bond will usually cost from 1 to 5 percent of the~~
21 ~~contract amount depending on the contractor's bonding ability. If~~
22 ~~a contractor cannot obtain such bonding, it may indicate his or her~~
23 ~~financial incapacity.~~

24 ~~(2) Require that payments be made directly to subcontractors~~
25 ~~and material suppliers through a joint control. Funding services~~
26 ~~may be available, for a fee, in your area which will establish~~
27 ~~voucher or other means of payment to your contractor. These~~
28 ~~services may also provide you with lien waivers and other forms~~
29 ~~of protection. Any joint control agreement should include the~~
30 ~~addendum approved by the registrar.~~

31 ~~(3) Issue joint checks for payment, made out to both your~~
32 ~~contractor and subcontractors or material suppliers involved in the~~
33 ~~project. The joint checks should be made payable to the persons or~~
34 ~~entities which send preliminary notices to you. Those persons or~~
35 ~~entities have indicated that they may have lien rights on your~~
36 ~~property, therefore you need to protect yourself. This will help to~~
37 ~~insure that all persons due payment are actually paid.~~

38 ~~(4) Upon making payment on any completed phase of the~~
39 ~~project, and before making any further payments, require your~~
40 ~~contractor to provide you with unconditional "Waiver and~~

1 Release” forms signed by each material supplier, subcontractor,
2 and laborer involved in that portion of the work for which payment
3 was made. The statutory lien releases are set forth in exact
4 language in Section 3262 of the Civil Code. Most stationery stores
5 will sell the “Waiver and Release” forms if your contractor does
6 not have them. The material suppliers, subcontractors, and
7 laborers that you obtain releases from are those persons or entities
8 who have filed preliminary notices with you. If you are not certain
9 of the material suppliers, subcontractors, and laborers working on
10 your project, you may obtain a list from your contractor. On
11 projects involving improvements to a single-family residence or
12 a duplex owned by individuals, the persons signing these releases
13 lose the right to file a mechanics’ lien claim against your property.
14 In other types of construction, this protection may still be
15 important, but may not be as complete.

16 To protect yourself under this option, you must be certain that
17 all material suppliers, subcontractors, and laborers have signed the
18 “Waiver and Release” form. If a mechanics’ lien has been filed
19 against your property, it can only be voluntarily released by a
20 recorded “Release of Mechanics’ Lien” signed by the person or
21 entity that filed the mechanics’ lien against your property unless
22 the lawsuit to enforce the lien was not timely filed. You should not
23 make any final payments until any and all such liens are removed.
24 You should consult an attorney if a lien is filed against your
25 property.”

26 (b) ~~Each contractor licensed under this chapter, prior to~~
27 ~~entering into a contract with an owner for work specified as home~~
28 ~~improvement or swimming pool construction pursuant to Section~~
29 ~~7159, shall give a copy of this “Notice to Owner” to the owner,~~
30 ~~the owner’s agent, or the payer. The failure to provide this notice~~
31 ~~as required shall constitute grounds for disciplinary action.~~

32 SEC. 2. *Section 7030 of the Business and Professions Code is*
33 *amended to read:*

34 7030. (a) *Every Except for home improvement contracts, as*
35 *defined in Section 7151.2, every person licensed pursuant to this*
36 *chapter shall include the following statement in at least 10-point*
37 *type on all written contracts with respect to which the person is a*
38 *prime contractor:*

39 “Contractors are required by law to be licensed and regulated
40 by the Contractors’ State License Board which has jurisdiction to

1 investigate complaints against contractors if a complaint regarding
2 a patent act or omission is filed within four years of the date of the
3 alleged violation. A complaint regarding a latent act or omission
4 pertaining to structural defects must be filed within 10 years of the
5 date of the alleged violation. Any questions concerning a
6 contractor may be referred to the Registrar, Contractors' State
7 License Board, P.O. Box 26000, Sacramento, California 95826."

8 ~~(b) At the time of making a bid or prior to entering into a~~
9 ~~contract to perform work on residential property with four or fewer~~
10 ~~units, whichever occurs first, a contractor shall provide the~~
11 ~~following notice in capital letters in at least 10-point roman~~
12 ~~boldface type or in contrasting red print in at least 8-point roman~~
13 ~~boldface type:~~

14
15 ~~"STATE LAW REQUIRES ANYONE WHO CONTRACTS TO~~
16 ~~DO CONSTRUCTION WORK TO BE LICENSED BY THE~~
17 ~~CONTRACTORS' STATE LICENSE BOARD IN THE~~
18 ~~LICENSE CATEGORY IN WHICH THE CONTRACTOR IS~~
19 ~~GOING TO BE WORKING IF THE TOTAL PRICE OF THE~~
20 ~~JOB IS \$500 OR MORE (INCLUDING LABOR AND~~
21 ~~MATERIALS).~~

22
23 ~~LICENSED CONTRACTORS ARE REGULATED BY LAWS~~
24 ~~DESIGNED TO PROTECT THE PUBLIC. IF YOU~~
25 ~~CONTRACT WITH SOMEONE WHO DOES NOT HAVE A~~
26 ~~LICENSE, THE CONTRACTORS' STATE LICENSE BOARD~~
27 ~~MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT.~~
28 ~~YOUR ONLY REMEDY AGAINST AN UNLICENSED~~
29 ~~CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY~~
30 ~~BE LIABLE FOR DAMAGES ARISING OUT OF ANY~~
31 ~~INJURIES TO THE CONTRACTOR OR HIS OR HER~~
32 ~~EMPLOYEES.~~

33
34 ~~YOU MAY CONTACT THE CONTRACTORS' STATE~~
35 ~~LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR~~
36 ~~HAS A VALID LICENSE. THE BOARD HAS COMPLETE~~
37 ~~INFORMATION ON THE HISTORY OF LICENSED~~
38 ~~CONTRACTORS, INCLUDING ANY POSSIBLE~~
39 ~~SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND~~
40 ~~CITATIONS. THE BOARD HAS OFFICES THROUGHOUT~~

~~CALIFORNIA. PLEASE CHECK THE GOVERNMENT
PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST
YOU OR CALL 1-800-321-CSLB FOR MORE
INFORMATION.”~~

(b) Every person licensed pursuant to this chapter shall include the following statement in at least 12-point type in all contracts written pursuant to Section 7151.2 and in the home improvement checklist required pursuant to subdivision (i) of Section 7159.4:

“Information about the Contractors State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about licensed contractors, including disclosable complaints and disciplinary actions and civil judgments reported to CSLB.

Use only licensed contractors. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor’s employees.

For more information:

Visit CSLB’s Web site at www.cslb.ca.gov.

Call CSLB at 1-800-321-CSLB (2752).

Write CSLB at P.O. Box 26000, Sacramento, CA. 95826.”

(c) Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

SEC. 3. Section 7151.2 of the Business and Professions Code is amended to read:

7151.2. (a) “Home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a

contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder.

~~“Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson, and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services. A registered salesperson employed by a home improvement contractor may enter into a home improvement contract on behalf of that contractor.~~

(b) “Service and repair contract” is a home improvement contract initiated by the homeowner or tenant for service or repair that meets all of the following requirements:

(1) The contract price is seven hundred fifty dollars (\$750) or less.

(2) The negotiation between the parties is initiated by the buyer.

(3) The contractor does not sell the buyer goods or service beyond those reasonably necessary to address the particular problem that caused the buyer to call for service or repair.

(4) Payment is made only after the work is satisfactorily completed.

SEC. 4. Section 7159 of the Business and Professions Code is repealed.

~~7159. This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts,~~

1 including all labor, services, and materials to be furnished by the
2 contractor, exceeds five hundred dollars (\$500).

3 ~~Every home improvement contract and every contract, the~~
4 ~~primary purpose of which is the construction of a swimming pool,~~
5 ~~is subject to this section. Every contract and any changes in the~~
6 ~~contract subject to this section shall be evidenced by a writing and~~
7 ~~shall be signed by all the parties to the contract. The writing shall~~
8 ~~contain all of the following:~~

9 ~~(a) The name, address, and license number of the contractor,~~
10 ~~and the name and registration number of any salesperson who~~
11 ~~solicited or negotiated the contract.~~

12 ~~(b) The approximate dates when the work will begin and on~~
13 ~~which all construction is to be completed.~~

14 ~~(c) A plan and scale drawing showing the shape, size,~~
15 ~~dimensions, and construction and equipment specifications for a~~
16 ~~swimming pool and for other home improvements, a description~~
17 ~~of the work to be done and description of the materials to be used~~
18 ~~and the equipment to be used or installed, and the agreed~~
19 ~~consideration for the work.~~

20 ~~(d) If the payment schedule contained in the contract provides~~
21 ~~for a downpayment to be paid to the contractor by the owner or the~~
22 ~~tenant before the commencement of work, the downpayment may~~
23 ~~not exceed two hundred dollars (\$200) or 2 percent of the contract~~
24 ~~price for swimming pools, or one thousand dollars (\$1,000) or 10~~
25 ~~percent of the contract price for other home improvements,~~
26 ~~excluding finance charges, whichever is less.~~

27 ~~(e) A schedule of payments showing the amount of each~~
28 ~~payment as a sum in dollars and cents. In no event may the payment~~
29 ~~schedule provide for the contractor to receive, nor may the~~
30 ~~contractor actually receive, payments in excess of 100 percent of~~
31 ~~the value of the work performed on the project at any time,~~
32 ~~excluding finance charges, except that the contractor may receive~~
33 ~~an initial downpayment authorized by subdivision (d). With~~
34 ~~respect to a swimming pool contract, the final payment may be~~
35 ~~made at the completion of the final plastering phase of~~
36 ~~construction, provided that any installation or construction of~~
37 ~~equipment, decking, or fencing required by the contract is also~~
38 ~~completed. A failure by the contractor without lawful excuse to~~
39 ~~substantially commence work within 20 days of the approximate~~
40 ~~date specified in the contract when work will begin shall postpone~~

1 the next succeeding payment to the contractor for that period of
2 time equivalent to the time between when substantial
3 commencement was to have occurred and when it did occur. The
4 schedule of payments shall be stated in dollars and cents, and shall
5 be specifically referenced to the amount of work or services to be
6 performed and to any materials and equipment to be supplied.
7 With respect to a contract that provides for a schedule of monthly
8 payments to be made by the owner or tenant and for a schedule of
9 payments to be disbursed to the contractor by a person or entity to
10 whom the contractor intends to assign the right to receive the
11 owner's or tenant's monthly payments, the payments referred to in
12 this subdivision mean the payments to be disbursed by the assignee
13 and not those payments to be made by the owner or tenant.

14 (f) A statement that, upon satisfactory payment being made for
15 any portion of the work performed, the contractor shall, prior to
16 any further payment being made, furnish to the person contracting
17 for the home improvement or swimming pool a full and
18 unconditional release from any claim or mechanic's lien pursuant
19 to Section 3114 of the Civil Code for that portion of the work for
20 which payment has been made.

21 (g) The requirements set forth in subdivisions (d), (e), and (f)
22 do not apply when the contract provides for the contractor to
23 furnish a performance and payment bond, lien and completion
24 bond, bond equivalent, or joint control approved by the registrar
25 covering full performance and completion of the contract and the
26 bonds or joint control is or are furnished by the contractor, or when
27 the parties agree for full payment to be made upon or for a schedule
28 of payments to commence after satisfactory completion of the
29 project. The contract shall contain, in close proximity to the
30 signatures of the owner and contractor, a notice in at least 10-point
31 type stating that the owner or tenant has the right to require the
32 contractor to have a performance and payment bond.

33 (h) No extra or change-order work may be required to be
34 performed without prior written authorization of the person
35 contracting for the construction of the home improvement or
36 swimming pool. No change-order is enforceable against the
37 person contracting for home improvement work or swimming
38 pool construction unless it clearly sets forth the scope of work
39 encompassed by the change-order and the price to be charged for
40 the changes. Any change-order forms for changes or extra work

1 shall be incorporated in, and become a part of, the contract. Failure
2 to comply with the requirements of this subdivision does not
3 preclude the recovery of compensation for work performed based
4 upon quasi-contract, quantum meruit, restitution, or other similar
5 legal or equitable remedies designed to prevent unjust enrichment.

6 (i) ~~If the contract provides for a payment of a salesperson's~~
7 ~~commission out of the contract price, that payment shall be made~~
8 ~~on a pro-rata basis in proportion to the schedule of payments made~~
9 ~~to the contractor by the disbursing party in accordance with~~
10 ~~subdivision (e).~~

11 (j) ~~The language of the notice required pursuant to Section~~
12 ~~7018.5.~~

13 (k) ~~What constitutes substantial commencement of work~~
14 ~~pursuant to the contract.~~

15 (l) ~~A notice that failure by the contractor without lawful excuse~~
16 ~~to substantially commence work within 20 days from the~~
17 ~~approximate date specified in the contract when work will begin~~
18 ~~is a violation of the Contractors' State License Law.~~

19 (m) ~~If the contract provides for a contractor to furnish joint~~
20 ~~control, the contractor shall not have any financial or other interest~~
21 ~~in the joint control.~~

22 ~~A failure by the contractor without lawful excuse to~~
23 ~~substantially commence work within 20 days from the~~
24 ~~approximate date specified in the contract when work will begin~~
25 ~~is a violation of this section.~~

26 ~~This section does not prohibit the parties to a home~~
27 ~~improvement contract from agreeing to a contract or account~~
28 ~~subject to Chapter 1 (commencing with Section 1801) of Title 2~~
29 ~~of Part 4 of Division 3 of the Civil Code.~~

30 ~~The writing may also contain other matters agreed to by the~~
31 ~~parties to the contract.~~

32 ~~The writing shall be legible and shall be in a form that clearly~~
33 ~~describes any other document that is to be incorporated into the~~
34 ~~contract. Before any work is done, the owner shall be furnished a~~
35 ~~copy of the written agreement, signed by the contractor.~~

36 ~~For purposes of this section, the board shall, by regulation,~~
37 ~~determine what constitutes "without lawful excuse."~~

38 ~~The provisions of this section are not exclusive and do not~~
39 ~~relieve the contractor or any contract subject to it from compliance~~
40 ~~with all other applicable provisions of law.~~

~~A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.~~

~~(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (c) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.~~

~~(o) (1) An indictment or information against a person who is not licensed, but who is required to be licensed under this chapter, shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.~~

~~(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within one year from the date the buyer signs the contract.~~

~~(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.~~

SEC. 5. Section 7159 is added to the Business and Professions Code, to read:

7159. This section applies only to home improvement contracts, including service and repair contracts, as defined in Section 7151.2. A violation of this section is cause for discipline.

(a) A home improvement contract and any changes to the contract shall be in a writing signed by the parties.

1 (b) The writing shall be legible and in a form that clearly
2 describes any other document that is incorporated into the
3 contract, including a bill of materials, a detailed description of the
4 work to be done, or an arbitration agreement.

5 (c) Before any work is started, the contractor shall give the
6 owner a copy of the contract that is signed by the contractor. The
7 owner's receipt of the copy triggers the owner's three-day right to
8 cancel, if the right to cancel is applicable.

9 (d) A change-order form for changes or extra work shall be
10 incorporated into the contract and shall become part of the
11 contract if it is in a writing signed by the parties.

12 (e) The provisions of this section are not exclusive and do not
13 relieve the contractor from compliance with any other applicable
14 provision of law.

15 SEC. 6. Section 7159.3 of the Business and Professions Code
16 is repealed.

17 ~~7159.3. (a) A home improvement contract and an estimate~~
18 ~~for home improvement work shall be accompanied by and include~~
19 ~~all of the following:~~

20 ~~(1) A statement prepared by the board through regulation that~~
21 ~~emphasizes the value of commercial general liability insurance~~
22 ~~and encourages the owner or tenant to verify the contractor's~~
23 ~~insurance coverage and status.~~

24 ~~(2) A check box indicating whether or not the contractor carries~~
25 ~~commercial general liability insurance, and if that is the case, the~~
26 ~~name and the telephone number of the insurer.~~

27 ~~(3) A checklist prepared by the board through regulation~~
28 ~~setting forth the items that an owner contracting for home~~
29 ~~improvement should consider when reviewing a proposed home~~
30 ~~improvement contract.~~

31 ~~(b) This section shall become operative three months after the~~
32 ~~board adopts the regulations referenced in paragraph (1) of~~
33 ~~subdivision (a).~~

34 SEC. 7. Section 7159.3 is added to the Business and
35 Professions Code, to read:

36 7159.3. This section applies to all home improvement
37 contracts, as defined in Section 7151.2. Failure to provide the
38 following information, notices, and disclosures is cause for
39 discipline. A contractor who performs home improvement work is

1 required to provide all of the following information, notices, and
2 disclosures in a home improvement contract:

3 (a) The name, business address, and license number of the
4 contractor and the license category relevant to the project.

5 (b) The name and registration number of the home
6 improvement salesperson, if any.

7 (c) The notice: “Notice to the Buyer: You are entitled to a
8 completely filled in copy of this agreement before any work may be
9 started.”

10 (d) The heading “Commercial General Liability Insurance
11 (CGL),” followed by whichever statement that is both relevant and
12 correct:

13 (1) “[The name on the license or “This contractor”] does not
14 carry commercial general liability insurance”; or

15 (2) “[The name on the license or “This contractor”] carries
16 commercial general liability insurance written by [the insurance
17 company]. You may call the [insurance company] at ____ to check
18 the contractor’s insurance coverage”; or

19 (3) “[The name on the license or “This contractor”] is
20 self-insured.”

21 (e) The heading: “Workers’ Compensation,” followed by
22 whichever following statement is both relevant and correct:

23 (1) “[The name on the license or “This contractor”] has no
24 employees and is exempt from workers’ compensation
25 requirements”; or

26 (2) [The name on the license or “This contractor”] certifies
27 that he or she carries workers’ compensation insurance for all
28 employees and has verified that all subcontractors also carry this
29 insurance for his or her employees.”

30 (f) The heading: “Approximate Start Date” and “Approximate
31 Completion Date,” each followed by the approximate dates for
32 start and completion.

33 (g) The heading: “Description of the project and detailed
34 description of the materials to be used and the equipment to be
35 used or installed:” followed by a description of the project and a
36 detailed description of the materials to be used and the equipment
37 to be used or installed.

38 (h) If documents are to be incorporated into the contract, the
39 heading, “List of Documents Incorporated into the Contract,”
40 followed by the list of documents incorporated into the contract.

1 (i) *The signatures of the contractor or the contractor's*
2 *representative, and the buyer.*

3 (j) *The date the contract was signed.*

4 SEC. 8. *Section 7159.4 is added to the Business and*
5 *Professions Code, to read:*

6 7159.4. *This section applies to all home improvement*
7 *contracts, except service and repair contracts, as defined in*
8 *Section 7151.2. Failure to provide the following information,*
9 *notices, and disclosures is cause for discipline. In addition to the*
10 *requirements of Section 7159.3, a contractor who performs home*
11 *improvement work is required to provide the following*
12 *information, notices, and disclosures in all home improvement*
13 *contract:*

14 (a) *Notice of the type of contract: Home Improvement.*

15 (b) *The heading: "Contract Amount," followed by the amount*
16 *of the contract in dollars and cents.*

17 (c) *For swimming pools, in addition to the project description*
18 *required under Section 7159.3, a plan and scale drawing showing*
19 *the shape, size, dimensions, and the construction and equipment*
20 *specifications.*

21 (d) *If a downpayment will be charged, the heading:*
22 *"Downpayment" and a space where the actual downpayment*
23 *appears followed by the text in capitol letters: "THE*
24 *DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT*
25 *OF THE CONTRACT PRICE, WHICHEVER IS LESS."*

26 (e) *If a payment schedule provides for progress payments to be*
27 *made prior to completion of the contract, the contract shall include*
28 *a schedule labeled "Schedule of Progress Payments," stated in*
29 *dollars and cents and specifically referencing the amount of work*
30 *or services to be performed and any materials and equipment to*
31 *be supplied, and the following statement:*

32 *"The schedule of progress payments should be planned so that,*
33 *except for the downpayment, the total amount of payments to be*
34 *made at any given time will not exceed the value of the work*
35 *performed. The time for payment should be tied to the completion*
36 *of specific phases of work."*

37 (f) *If applicable, the heading, "List of documents to be*
38 *incorporated into the contract," followed by the list of documents*
39 *incorporated into the contract.*

1 (g) *The heading “Note about Extra and Change Orders”*
2 *followed by the following statement:*

3 *“Extra and change orders become part of the contract once the*
4 *order is prepared in writing and signed by the parties. The order*
5 *must describe the scope of the extra and/or change, the cost to be*
6 *added or subtracted from the contract, and the effect the order will*
7 *have on the schedule of progress payments.*

8 (h) *Except when the contract is negotiated at the contractor’s*
9 *place of business, the three-day notice of the right to cancel found*
10 *in clause (i) of paragraph (4) of subdivision (a) of Section 1689.7*
11 *of the Civil Code.*

12 (i) *The following notice in 12-point times new roman type:*

13 *“MECHANICS LIEN WARNING:*

14
15 *Anyone who helps improve your property, but who is not paid,*
16 *may file what is called a mechanics’ lien on your property. A*
17 *mechanics’ lien is a claim, like a mortgage or home equity loan,*
18 *made against your property and filed with the county recorder.*

19 *Even if you pay your contractor in full, unpaid subcontractors,*
20 *suppliers, and laborers who helped to improve your property may*
21 *file mechanics’ liens. If a court finds the lien is valid, you could be*
22 *forced to pay twice or have a court officer sell your home to pay*
23 *the lien. Liens can also affect your credit.*

24 *To preserve their right to file a lien, subcontractors and material*
25 *suppliers must provide you with a document called a “20-day*
26 *Preliminary Notice.” This notice is not a lien. The purpose of the*
27 *notice is to let you know that the person who sends you the notice*
28 *has the right to file a lien on your property if he or she is not paid.*

29 *Be careful. The Preliminary Notice can be sent up to 20 days*
30 *after the subcontractor starts work or the supplier provides*
31 *material. This can be a big problem if you pay your contractor*
32 *before you have received the Preliminary Notices.*

33 *You will not get Preliminary Notices from your prime contractor*
34 *or from laborers who work on your project. The law assumes that*
35 *you already know they are improving your property.*

36 *Protect yourself from liens.*

37
38 *You can protect yourself from liens by getting a list from your*
39 *contractor of all the subcontractors and material suppliers that*
40 *work on your project. Find out from your contractor when these*

1 *subcontractors started work and these suppliers delivered goods*
2 *or material. Then wait 20 days, paying attention to the Preliminary*
3 *Notices you receive.*

4 *Pay with joint checks.*

6 *When your contractor tells you it is time to pay for the work of*
7 *a subcontractor or supplier who has provided you with a*
8 *Preliminary Notice, write a joint check payable to both the*
9 *contractor and the subcontractor or material supplier.*

10 *Contact CSLB for information on other ways to prevent liens.*

11 *REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A*
12 *LIEN PLACED ON YOUR HOME. This can mean that you may*
13 *have to pay twice, or face the forced sale of your home to pay what*
14 *you owe.”*

15 *(i) A home improvement contract shall be accompanied by a*
16 *checklist prepared by the board by regulation that sets forth the*
17 *items that an owner should consider when reviewing a proposed*
18 *home improvement contract.*

19 *SEC. 9. Section 7159.5 is added to the Business and*
20 *Professions Code, to read:*

21 *7159.5. This section applies to all home improvement*
22 *contracts as defined in subdivision (b) of Section 7151.2. Failure*
23 *to provide the following information, notices, and disclosures is*
24 *cause for discipline. In addition to the information required under*
25 *Section 7159.3, a contractor who uses a service and repair*
26 *contract is required to provide the following information, notices,*
27 *and disclosures in all home improvement contracts:*

28 *(a) Notice of the type of contract: Service and Repair.*

29 *(b) The notice: “Work performed under a service and repair*
30 *contract is limited to \$750 unless the work agreed to under the*
31 *contract is an emergency necessary for the immediate protection*
32 *of people, or real or personal property.”*

33 *(c) Where the contract is a fixed contract amount, the heading:*
34 *“Contract Amount” followed by the amount of the contract in*
35 *dollars and cents.*

36 *(d) Where the contract is estimated by a time and materials*
37 *formula, the heading “Estimated Contract Amount” followed by*
38 *the estimated contract amount in dollars and cents. The contract*
39 *must disclose the set rate and the cost of materials. The contract*
40 *must also disclose how time will be computed: for example, in*

1 increments of quarter hours, half hours, or hours, and the
2 statement: “The actual contract amount of a Time and Materials
3 contract may not exceed the estimated contract amount without
4 authorization from the buyer.”

5 (e) Except when the contract is negotiated at the contractor’s
6 place of business, the three-day notice to the right to cancel found
7 in paragraph (5) of subdivision (a) of Section 1689.7 of the Civil
8 Code.

9 (f) Each service and repair contract shall be accompanied by
10 a checklist prepared by the board through regulation setting forth
11 the items that an owner should consider when reviewing a
12 proposed service and repair contract.

13 SEC. 10. Section 7159.6 is added to the Business and
14 Professions Code, to read:

15 7159.6. (a) This section applies to home improvement
16 contracts as defined in subdivision (a) of Section 7151.2.

17 (1) The contract must include the agreed contract price in
18 dollars and cents. The contract amount will include the entire cost
19 of the contract, including profit, labor, and materials, but
20 excluding finance charges.

21 (2) If there is a separate finance charge between the contractor
22 and the person contracting for home improvement, the finance
23 charge shall be set out separately from the contract price.

24 (3) If a downpayment will be charged, the downpayment may
25 not exceed one thousand dollars (\$1,000) or 10 percent of the
26 contract price, whichever is less.

27 (4) If, in addition to the downpayment, the contract provides for
28 payments to be made prior to completion of the work, the contract
29 shall include a schedule of payments in dollars and cents
30 specifically referencing the amount of work or services to be
31 performed and any materials and equipment to be supplied.

32 (5) Upon payment by the person contracting for home
33 improvement, and prior to any further payment being made, the
34 contractor shall, if requested, obtain and furnish to the person a
35 full and unconditional release from any potential lien claimant
36 claim or mechanic’s lien pursuant to Section 3114 of the Civil Code
37 for any portion of the work for which payment has been made. The
38 person contracting for home improvement may withhold all
39 further payments until these releases are furnished.

1 (6) If the contract provides for a payment of a salesperson's
2 commission out of the contract price, that payment shall be made
3 on a pro rata basis in proportion to the schedule of payments made
4 to the contractor by the disbursing party in accordance with
5 paragraph (4).

6 (7) Except for the downpayment, the contractor may neither
7 request nor accept payment that exceeds the value of the work
8 performed.

9 (8) A contractor furnishing a performance and payment bond,
10 lien and completion bond, bond equivalent, or joint control
11 approved by the registrar covering full performance and
12 completion of the contract is exempt from the downpayment and
13 progress payment requirements of these paragraphs and may
14 accept payment prior to completion. If the contract provides for a
15 contractor to furnish joint control, the contractor shall not have
16 any financial or other interest in the joint control.

17 (b) A violation of this section is cause for discipline.

18 (c) A violation of paragraphs (3), (4), (5) and (7) of subdivision
19 (a) by a licensee or a person subject to be licensed under this
20 chapter, or by his or her agent or salesperson, is a misdemeanor
21 punishable by a fine of not less than one hundred dollars (\$100)
22 nor more than five thousand dollars (\$5,000), or by imprisonment
23 in a county jail not exceeding one year, or by both fine and
24 imprisonment. An indictment or information shall be brought, or
25 a criminal complaint filed within four years from the date the buyer
26 signs the contract.

27 (d) Any person who violates this section as part of a plan or
28 scheme to defraud an owner of a residential or nonresidential
29 structure, including a mobilehome or manufactured home, in
30 connection with the offer or performance of repairs to the structure
31 for damage caused by a natural disaster, shall be ordered by the
32 court to make full restitution to the victim based on the person's
33 ability to pay, as defined in subdivision (e) of Section 1203.1b of
34 the Penal Code. In addition to full restitution, and imprisonment
35 authorized by this section, the court may impose a fine of not less
36 than five hundred dollars (\$500) nor more than twenty-five
37 thousand dollars (\$25,000), based upon the defendant's ability to
38 pay. This subdivision applies to natural disasters for which a state
39 of emergency is proclaimed by the Governor pursuant to Section

1 8625 of the Government Code, or for which an emergency or major
2 disaster is declared by the President of the United States.

3 SEC. 11. Section 7159.7 is added to the Business and
4 Professions Code, to read:

5 7159.7. (a) This section applies to contractors performing
6 home improvement work under a service and repair contract as
7 defined in subdivision (b) of Section 7151.2.

8 (1) The contract may not exceed seven hundred fifty dollars
9 (\$750) unless the service or repair work agreed to under the
10 contract is necessary for the immediate protection of persons or
11 real or personal property.

12 (2) Under a service and repair contract, the contract amount
13 may be stated as either a fixed contract amount in dollars and cents
14 or, if a time and materials formula is used, as an estimated contract
15 amount in dollars and cents.

16 (3) The contract amount will include the entire cost of the
17 contract including profit, labor and materials but excluding
18 finance charges.

19 (4) The actual contract amount of a Time and Materials
20 contract may not exceed the estimated contract amount without
21 authorization from the buyer.

22 (5) The contractor may not accept payment prior to completion
23 of the service or repair.

24 (6) A service and repair contractor may charge only one service
25 charge. For purposes of this section, a service charge includes a
26 service or trip charge or an inspection fee.

27 (7) A service and repair contractor that charges a service
28 charge must disclose in all advertisements that there is a service
29 charge and, when the customer initiates the call for service,
30 disclose the amount of the service charge.

31 (8) The contractor must offer to the customer any parts that
32 were replaced.

33 (9) A contractor who furnishes a performance and payment
34 bond, lien and completion bond, bond equivalent, or joint control
35 approved by the registrar covering full performance and
36 completion of the contract, may accept payment prior to
37 completion. If the contract provides for a contractor to furnish
38 joint control, the contractor shall not have any financial or other
39 interest in the joint control.

40 (b) A violation of this section is cause for discipline.

(c) A violation of paragraph (1), (3), (4), (5), or (6) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment. An indictment or information shall be brought, or a criminal complaint filed within four years from the date the buyer signs the contract.

(d) An indictment or information against a person who is licensed or who is subject to licensure shall be brought, or a criminal complaint filed, for a violation of paragraphs (1), (3), (4), (5), and (6) of subdivision (a) within four years from the date the buyer signs the contract.

(e) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

SEC. 12. Section 7159.9 is added to the Business and Professions Code, to read:

7159.9. (a) A change order is not enforceable against a buyer unless the change order sets forth all of the following:

(1) The scope of work encompassed by the change order.

(2) The amount to be added or subtracted from the contract for the changes.

(3) The effect the extra work or change order will make in the progress payments or the completion date.

(b) The buyer may not require a contractor to perform extra or change-order work without providing written authorization.

(c) *Failure to comply with the requirements of this subdivision does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.*

SEC. 13. *Section 1689.5 of the Civil Code is amended to read:*
1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) “Home solicitation contract or offer” means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. “Home solicitation contract” does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto, or any contract for repair services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is less than ~~one hundred dollars (\$100)~~ *seven hundred fifty dollars (\$750)*, (2) the negotiation between the parties was initiated by the prospective buyer, and (3) ~~the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer~~ *contractor does not offer the buyer goods or services beyond the scope of the buyer’s initial request.*

(b) “Appropriate trade premises,” means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) “Goods” means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of

1 the Health and Safety Code, nor any goods sold with this
2 mobilehome if either are sold under a contract subject to Section
3 18036.5 of the Health and Safety Code.

4 (d) “Services” means work, labor and services, including, but
5 not limited to, services furnished in connection with the repair,
6 restoration, alteration, or improvement of residential premises, or
7 services furnished in connection with the sale or repair of goods
8 as defined in Section 1802.1, and courses of instruction, regardless
9 of the purpose for which they are taken, but does not include the
10 services of attorneys, real estate brokers and salesmen, securities
11 dealers or investment counselors, physicians, optometrists, or
12 dentists, nor financial services offered by banks, savings
13 institutions, credit unions, industrial loan companies, personal
14 property brokers, consumer finance lenders, or commercial
15 finance lenders, organized pursuant to state or federal law, that are
16 not connected with the sale of goods or services, as defined herein,
17 nor the sale of insurance that is not connected with the sale of goods
18 or services as defined herein, nor services in connection with the
19 sale or installation of mobilehomes or of goods sold with a
20 mobilehome if either are sold or installed under a contract subject
21 to Section 18036.5 of the Health and Safety Code, nor services for
22 which the tariffs, rates, charges, costs, or expenses, including in
23 each instance the time sale price, is required by law to be filed with
24 and approved by the federal government or any official,
25 department, division, commission, or agency of the United States
26 or of the state.

27 (e) “Business day” means any calendar day except Sunday, or
28 the following business holidays: New Year’s Day, Washington’s
29 Birthday, Memorial Day, Independence Day, Labor Day,
30 Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas
31 Day.

32 *SEC. 14. Section 1689.6 of the Civil Code is amended to read:*

33 1689.6. (a) ~~In~~ (1) *Except for a contract written pursuant to*
34 *subdivision (b) of Section 7151.2 of the Business and Professions*
35 *Code, in addition to any other right to revoke an offer, the buyer*
36 *has the right to cancel a home solicitation contract or offer until*
37 *midnight of the third business day after the day on which the buyer*
38 *signs an agreement or offer to purchase which complies with*
39 *Section 1689.7.*



(2) *For a contract written pursuant to subdivision (a) of Section 7151.2 of the Business and Professions Code, in addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the buyer receives a signed and dated copy of the contract.*

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) “Personal emergency response unit,” for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone

1 line through which a monitoring station is alerted of an emergency
2 and emergency assistance is summoned.

3 *SEC. 15. Section 1689.7 of the Civil Code is amended to read:*

4 1689.7. (a) (1) In a home solicitation contract or offer the
5 buyer's agreement or offer to purchase shall be written in the same
6 language, e.g., Spanish, as principally used in the oral sales
7 presentation, shall be dated, signed by the buyer, and except as
8 provided in paragraph (2), shall contain in immediate proximity to
9 the space reserved for his or her signature a conspicuous statement
10 in a size equal to at least 10-point bold type, as follows: "You, the
11 buyer, may cancel this transaction at any time prior to midnight of
12 the third business day after the date of this transaction. See the
13 attached notice of cancellation form for an explanation of this
14 right."

15 (2) The statement required pursuant to this subdivision for a
16 home solicitation contract or offer for the purchase of a personal
17 emergency response unit, as defined in Section 1689.6, which is
18 not installed with and as part of a home security alarm system
19 subject to the Alarm Company Act (Chapter 11.6 (commencing
20 with Section 7590) of Division 3 of the Business and Professions
21 Code) which has two or more stationary protective devices used
22 to enunciate an intrusion or fire and is installed by an alarm
23 company operator operating under a current license issued
24 pursuant to the Alarm Company Act, is as follows: "You, the
25 buyer, may cancel this transaction at any time prior to midnight of
26 the seventh business day after the date of this transaction. See the
27 attached notice of cancellation form for an explanation of this
28 right."

29 (3) The statement required pursuant to this subdivision for the
30 repair or restoration of residential premises damaged by a disaster
31 pursuant to subdivision (c) of Section 1689.6 is as follows: "You,
32 the buyer, may cancel this transaction at any time prior to midnight
33 of the seventh business day after the date of this transaction. See
34 the attached notice of cancellation form for an explanation of this
35 right."

36 (4) *The statement required pursuant to this subdivision for a*
37 *home improvement contract, as defined in subdivision (a) of*
38 *Section 7151.2 of the Business and Professions Code, is as follows:*
39

1 *“Your Right to Cancel This Contract*

2
3 *Unless this contract was negotiated at the contractor’s place of*
4 *business, you, the buyer, have the right to cancel this contract. You*
5 *may cancel by e-mail, mailing, faxing, or delivering a written*
6 *notice to the contract at the contractor’s place of business by*
7 *midnight of the third day after you received a signed copy of the*
8 *contract that includes this notice. Include your name, your*
9 *address, and the date you received the signed copy of the contract*
10 *and this notice.”*

11 *(5) The statement required pursuant to this subdivision for a*
12 *service and repair contract, as defined in subdivision (b) of Section*
13 *7151.2 of the Business and Professions Code, is as follows:*

14 *“Your Right to Cancel This Contract”*

15
16 *Most consumer contracts allow you, the buyer, 3 days from the*
17 *day you sign the contract to cancel the contract. However, you may*
18 *not cancel a service and repair contract of \$750 or less if all of the*
19 *following apply:*

20
21 1. *You made the call to the contractor to request service or*
22 *repair.*

23 2. *The contractor did not sell you goods or services beyond those*
24 *reasonably necessary to address the particular problem that*
25 *caused you to call for service or repair.*

26 3. *Payment was not due until the job was completed.*

27 4. *The contract did not exceed \$750. Note that a service and*
28 *repair contract may exceed \$750 only if the service or repair is an*
29 *emergency or a necessary repair needed for the immediate*
30 *protection of people or property.*

31 *If any one of the conditions listed above does not apply, you may*
32 *cancel the contract by e-mailing, mailing, faxing, or delivering a*
33 *written notice to the contractor at the contractor’s place of*
34 *business within 3 days of receiving this notice. Include your name,*
35 *your address, and the date you received a signed copy of the*
36 *contract and this notice.*

37 (b) The agreement or offer to purchase shall contain on the first
38 page, in a type size no smaller than that generally used in the body
39 of the document, the following: (1) the name and address of the

1 seller to which the notice is to be mailed, and (2) the date the buyer
2 signed the agreement or offer to purchase.

3 (c) Except as provided in subdivision (d), the agreement or
4 offer to purchase shall be accompanied by a completed form in
5 duplicate, captioned “Notice of Cancellation” which shall be
6 attached to the agreement or offer to purchase and be easily
7 detachable, and which shall contain in type of at least 10-point the
8 following statement written in the same language, e.g., Spanish,
9 as used in the contract:

10
11 “Notice of Cancellation”

12
13 /enter date of transaction/
14 _____

15 (Date)
16

17 You may cancel this transaction, without any penalty or
18 obligation, within three business days from the above date.

19 If you cancel, any property traded in, any payments made by you
20 under the contract or sale, and any negotiable instrument executed
21 by you will be returned within 10 days following receipt by the
22 seller of your cancellation notice, and any security interest arising
23 out of the transaction will be canceled.

24 If you cancel, you must make available to the seller at your
25 residence, in substantially as good condition as when received, any
26 goods delivered to you under this contract or sale, or you may, if
27 you wish, comply with the instructions of the seller regarding the
28 return shipment of the goods at the seller’s expense and risk.

29 If you do make the goods available to the seller and the seller
30 does not pick them up within 20 days of the date of your notice of
31 cancellation, you may retain or dispose of the goods without any
32 further obligation. If you fail to make the goods available to the
33 seller, or if you agree to return the goods to the seller and fail to do
34 so, then you remain liable for performance of all obligations under
35 the contract.

36
37 To cancel this transaction, mail or deliver a signed and dated copy of this
38 cancellation notice, or any other written notice, or send a telegram
39 to _____,

40 /name of seller/

at _____
 _____ /address of seller's place of business/
 not later than midnight of _____.
 _____ (Date)

I hereby cancel this transaction. _____
 _____ (Date)

 _____ (Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) Any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the "Notice of Cancellation" required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the

1 requirement that cancellation be in writing, at the time the home
2 solicitation contract or offer is executed.

3 (g) Until the seller has complied with this section the buyer may
4 cancel the home solicitation contract or offer.

5 (h) “Contract or sale” as used in subdivision (c) means “home
6 solicitation contract or offer” as defined by Section 1689.5.

7 (i) *Immediately following the statement describing the right to*
8 *cancel, a home improvement contract, as defined in Section 7151.2*
9 *of the Business and Professions Code, shall include the following*
10 *statement:*

11
12 *“Once you have canceled the contract, you made need to take*
13 *more steps to complete the process. Visit CSLB’s Web site, or call*
14 *1-800-312-CSLB (2752) for instructions on what to do when you*
15 *are canceling a home improvement or service and repair*
16 *contract.”*

17 SEC. 16. Section 1689.13 is added to the Civil Code, to read:

18 1689.13. Sections 1689.5, 1689.6, 1689.7, 1689.10, 1689.12,
19 and 1689.14 do not apply to a contract that meets all of the
20 following requirements:

21 (a) *The contract is initiated by the buyer or his or her agent or*
22 *insurance representative.*

23 (b) *The contract is executed in connection with making of*
24 *emergency or immediately necessary repairs that are necessary for*
25 *the immediate protection of persons or real or personal property.*

26 (c) *The buyer gives the seller a separate statement that is dated*
27 *and signed that describes the situation that requires immediate*
28 *remedy, and expressly acknowledges and waives the right to cancel*
29 *the sale within three or seven business days, whichever applies.*

30 ~~Code is amended to read:~~

31 ~~7159. This section applies only to home improvement~~
32 ~~contracts, as defined in Section 7151.2, between a contractor,~~
33 ~~whether a general contractor or a specialty contractor, who is~~
34 ~~licensed or subject to be licensed pursuant to this chapter with~~
35 ~~regard to the transaction and who contracts with an owner or tenant~~
36 ~~for work upon a residential building or structure, or upon land~~
37 ~~adjacent thereto, for proposed repairing, remodeling, altering,~~
38 ~~converting, modernizing, or adding to the residential building or~~
39 ~~structure or land adjacent thereto, and where the aggregate~~
40 ~~contract price specified in one or more improvement contracts,~~

including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and any change to the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. Every contract and any change to the contract subject to this section shall be written in plain language and shall be written, organized, and designed so that it is easy to read and understand. Every contract subject to this section shall contain all of the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment may not exceed two hundred dollars (\$200) or 2 percent of the contract price for swimming pools, or one thousand dollars (\$1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is less.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event may the payment schedule provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also

1 ~~completed. A failure by the contractor without lawful excuse to~~
2 ~~substantially commence work within 20 days of the approximate~~
3 ~~date specified in the contract when work will begin shall postpone~~
4 ~~the next succeeding payment to the contractor for that period of~~
5 ~~time equivalent to the time between when substantial~~
6 ~~commencement was to have occurred and when it did occur. The~~
7 ~~schedule of payments shall be stated in dollars and cents, and shall~~
8 ~~be specifically referenced to the amount of work or services to be~~
9 ~~performed and to any materials and equipment to be supplied.~~
10 ~~With respect to a contract that provides for a schedule of monthly~~
11 ~~payments to be made by the owner or tenant and for a schedule of~~
12 ~~payments to be disbursed to the contractor by a person or entity to~~
13 ~~whom the contractor intends to assign the right to receive the~~
14 ~~owner's or tenant's monthly payments, the payments referred to in~~
15 ~~this subdivision mean the payments to be disbursed by the assignee~~
16 ~~and not those payments to be made by the owner or tenant.~~

17 ~~(f) A statement that, upon satisfactory payment being made for~~
18 ~~any portion of the work performed, the contractor shall, prior to~~
19 ~~any further payment being made, furnish to the person contracting~~
20 ~~for the home improvement or swimming pool a full and~~
21 ~~unconditional release from any claim or mechanic's lien pursuant~~
22 ~~to Section 3114 of the Civil Code for that portion of the work for~~
23 ~~which payment has been made.~~

24 ~~(g) The requirements set forth in subdivisions (d), (e), and (f)~~
25 ~~do not apply when the contract provides for the contractor to~~
26 ~~furnish a performance and payment bond, lien and completion~~
27 ~~bond, bond equivalent, or joint control approved by the registrar~~
28 ~~covering full performance and completion of the contract and the~~
29 ~~bonds or joint control is or are furnished by the contractor, or when~~
30 ~~the parties agree for full payment to be made upon or for a schedule~~
31 ~~of payments to commence after satisfactory completion of the~~
32 ~~project. The contract shall contain, in close proximity to the~~
33 ~~signatures of the owner and contractor, a notice in at least 10-point~~
34 ~~type stating that the owner or tenant has the right to require the~~
35 ~~contractor to have a performance and payment bond.~~

36 ~~(h) No extra or change order work may be required to be~~
37 ~~performed without prior written authorization of the person~~
38 ~~contracting for the construction of the home improvement or~~
39 ~~swimming pool. No change order is enforceable against the person~~
40 ~~contracting for home improvement work or swimming pool~~

1 ~~construction unless it clearly sets forth the scope of work~~
2 ~~encompassed by the change order and the price to be charged for~~
3 ~~the changes. Any change order forms for changes or extra work~~
4 ~~shall be incorporated in, and become a part of, the contract. Failure~~
5 ~~to comply with the requirements of this subdivision does not~~
6 ~~preclude the recovery of compensation for work performed based~~
7 ~~upon quasi-contract, quantum meruit, restitution, or other similar~~
8 ~~legal or equitable remedies designed to prevent unjust enrichment.~~

9 ~~(i) If the contract provides for a payment of a salesperson's~~
10 ~~commission out of the contract price, that payment shall be made~~
11 ~~on a pro rata basis in proportion to the schedule of payments made~~
12 ~~to the contractor by the disbursing party in accordance with~~
13 ~~subdivision (c).~~

14 ~~(j) The language of the notice required pursuant to Section~~
15 ~~7018.5:~~

16 ~~(k) What constitutes substantial commencement of work~~
17 ~~pursuant to the contract:~~

18 ~~(l) A notice that failure by the contractor without lawful excuse~~
19 ~~to substantially commence work within 20 days from the~~
20 ~~approximate date specified in the contract when work will begin~~
21 ~~is a violation of the Contractors' State License Law.~~

22 ~~(m) If the contract provides for a contractor to furnish joint~~
23 ~~control, the contractor shall not have any financial or other interest~~
24 ~~in the joint control:~~

25 ~~A failure by the contractor without lawful excuse to~~
26 ~~substantially commence work within 20 days from the~~
27 ~~approximate date specified in the contract when work will begin~~
28 ~~is a violation of this section.~~

29 ~~This section does not prohibit the parties to a home~~
30 ~~improvement contract from agreeing to a contract or account~~
31 ~~subject to Chapter 1 (commencing with Section 1801) of Title 2~~
32 ~~of Part 4 of Division 3 of the Civil Code.~~

33 ~~The writing may also contain other matters agreed to by the~~
34 ~~parties to the contract:~~

35 ~~The writing shall be legible and shall be in a form that clearly~~
36 ~~describes any other document that is to be incorporated into the~~
37 ~~contract. Before any work is done, the owner shall be furnished a~~
38 ~~copy of the written agreement, signed by the contractor.~~

39 ~~For purposes of this section, the board shall, by regulation,~~
40 ~~determine what constitutes "without lawful excuse."~~

1 The provisions of this section are not exclusive and do not
2 relieve the contractor or any contract subject to it from compliance
3 with all other applicable provisions of law.

4 A violation of this section by a licensee, or a person subject to
5 be licensed, under this chapter, or by his or her agent or
6 salesperson, is a misdemeanor punishable by a fine of not less than
7 one hundred dollars (\$100) nor more than five thousand dollars
8 (\$5,000), or by imprisonment in the county jail not exceeding one
9 year, or by both that fine and imprisonment.

10 (n) Any person who violates this section as part of a plan or
11 scheme to defraud an owner of a residential or nonresidential
12 structure, including a mobilehome or manufactured home, in
13 connection with the offer or performance of repairs to the structure
14 for damage caused by a natural disaster, shall be ordered by the
15 court to make full restitution to the victim based on the person's
16 ability to pay, as defined in subdivision (e) of Section 1203.1b of
17 the Penal Code. In addition to full restitution, and imprisonment
18 authorized by this section, the court may impose a fine of not less
19 than five hundred dollars (\$500) nor more than twenty-five
20 thousand dollars (\$25,000), based upon the defendant's ability to
21 pay. This subdivision applies to natural disasters for which a state
22 of emergency is proclaimed by the Governor pursuant to Section
23 8625 of the Government Code or for which an emergency or major
24 disaster is declared by the President of the United States.

25 (e) (1) An indictment or information against a person who is
26 not licensed, but who is required to be licensed under this chapter,
27 shall be brought, or a criminal complaint filed, for a violation of
28 this section within four years from the date the buyer signs the
29 contract.

30 (2) An indictment or information against a person who is
31 licensed under this chapter shall be brought, or a criminal
32 complaint filed, for a violation of this section within one year from
33 the date the buyer signs the contract.

34 (3) The limitations on actions in this subdivision shall not apply
35 to any administrative action filed against a licensed contractor.

36 SEC. 2.

37 SEC. 17. No reimbursement is required by this act pursuant
38 to Section 6 of Article XIII B of the California Constitution
39 because the only costs that may be incurred by a local agency or
40 school district will be incurred because this act creates a new crime

1 or infraction, eliminates a crime or infraction, or changes the
2 penalty for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition of a
4 crime within the meaning of Section 6 of Article XIII B of the
5 California Constitution.

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